

Application No. 10/510,632
Amendment dated May 21, 2008
After Final Office Action of April 21, 2008

7

Docket No.: 69887(52888)

REMARKS

Reconsideration of the subject application in view of the preceding amendments and the following remarks is respectfully requested. Claims 1-14 are pending in this application.

Claims 1, 2, and 11 have been amended herein, and claims 12 through 14 have been canceled by this amendment. Claims 15 and 16 have been added by this response. No new matter has been added by these amendments.

Rejection under 35 U.S.C. §112, Second Paragraph

Claims 1-10 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Specifically, the Examiner stated that "claims 1 and 2 recite no antecedent basis for the surface recited in the amendments thereto." Whereas the Applicants assert that it is inherent for the panels to have the claimed surfaces, the Applicants have amended Claims 1, 2 and 11 to expedite prosecution of the application.

Rejection under 35 U.S.C. §102(b) Or, In The Alternative 35 U.S.C. §103(a)

Claims 1-14 were rejected under 35 U.S.C. §102(b) over Nikolaus et al. (U.S. Patent No. 6,199,559) or Butcher et al. (U.S. Patent No. 5,107,871) alone, or in view of Whitaker et al. (U.S. Patent No. 6,364,097), Barnett et al. (U.S. Patent No. 6,326,069), or Muchin (U.S. Patent No. 5,161,688). The rejection is respectfully traversed for at least the following reasons.

35 U.S.C. 102(b) Rejections

Nikolaus et al. describes a container for storing makeup that includes a cover and a base that hold a cosmetic substance. The container provides a hermetic seal between the cover and the base. (Nikolaus et al., Abstract). The container is made entirely from plastic and

DC 242422.1

Application No. 10/510,632
Amendment dated May 21, 2008
After Final Office Action of April 21, 2008

8

Docket No.: 69887(52888)

consequently does not provide a surface coating barrier material to provide a substrate that blocks migration of odors/aromas from the package contents to the exterior.

Butcher et al. describes a compact container having a tray for containing cosmetics with a fine mesh screen and a separate compartment for storing a cosmetic applicator. (Butcher et al., Abstract). The bottom compartment and top compartment are molded as integral units from suitable materials such as plastics. (Butcher et al., col. 2, lines 41-43). Consequently, the compact container does not provide a surface coating barrier material to provide a substrate that blocks migration of odors/aromas from the package contents to the exterior

In contrast to the cited references, amended Claim 1 is directed to, *inter alia*, a container that includes complementary panels constructed of paperboard that are foldably joined along a hinge member, each panel having opposing upper and lower surfaces. The container includes at least one plastic tray that is adapted for receiving at least one item and is attached to a respective one of the complementary panels. The container also includes a locking mechanism for selectively retaining said complementary panels in face-to-face relationship with one another. At least one surface of the complementary panels is coated with a barrier material to provide a substrate that blocks the migration of odors or aromas from the container contents to the exterior. Further, the locking mechanism has a cover panel foldably joined to the complementary panels that overwraps the plastic tray and has a tab formed on one end thereof which is inserted into a slot formed in one of the complementary panels.

In contrast to the cited references, amended Claim 2 is directed to, *inter alia*, a container comprising complementary panels constructed of paperboard foldably joined along a hinge member, each panel having opposing upper and lower surfaces. The container includes

DC 242422.1

Application No. 10/510,632
Amendment dated May 21, 2008
After Final Office Action of April 21, 2008

9

Docket No.: 69887(52888)

complementary plastic trays attached to respective complementary panels and disposed for alignment with one another when the complementary panels are folded into face-to-face relationship with one another. At least one of the complementary trays is adapted for receiving at least one object. The trays include a locking mechanism for selectively retaining the complementary trays in face-to face relationship with one another. At least one surface of the complementary panels is coated with a barrier material to provide a substrate that blocks the migration of odors or aromas from the container contents to the exterior.

In contrast to the cited references, amended Claim 11 is directed to, *inter alia*, a container comprising complementary panels constructed of paperboard foldably joined along a hinge member, each panel having opposing upper and lower surfaces. The container has at least one plastic tray adapted for receiving at least one item, attached to a respective one of the complementary panels. The container has a locking mechanism for selectively retaining the complementary panels in face-to-face relationship with one another. Further an interior surface of one of the complementary panels includes a mirror deposited onto the surface thereof formed using either metallic foil or metallic ink.

It is respectfully submitted that the cited references do not teach, suggest, or disclose a container with paperboard panels in combination with the plastic tray(s) as recited in Claims 1, 2 and 11. Support for these amendments may be found in the specification at page 3, line 13 through page 4, line 6, and page 5, lines 7 through 10. The paperboard panels in combination with the plastic tray(s) of the claimed invention are preferable to compacts constructed of other materials because the compact is more economical to manufacture. Also, the paperboard panels allow the compact to be printed with text, graphics or any other suitable image by any available

DC 242422.1

Application No. 10/510,632
Amendment dated May 21, 2008
After Final Office Action of April 21, 2008

10

Docket No.: 69887(52888)

method. The paper board panels also allow for the mirror panels to be printed onto one or more surfaces using metallic ink. (Specification, page 2, lines 2-4 and page 4, lines 4-6).

Nikolaus et al. and Butcher et al. describe cosmetic containers but do not teach, suggest or disclose the construction of a container with paperboard panels in combination with plastic trays. Therefore, it is respectfully submitted that Nikolaus et al., or Butcher et al., do not teach, suggest, or disclose each and every claim element recited in Claims 1, 2 and 11, as presently amended.

Additionally, it is respectfully submitted that the cited references do not teach, suggest or disclose a locking mechanism including a cover panel foldably joined to the complementary panels that overwraps the plastic tray and has a tab formed on one end thereof which is inserted into a slot formed in one of the complementary panels as recited in amended Claim 1. Support for these amendments may be found in Figures 23 - 24 and in the specification at page 19, lines 8 through 15.

Nikolaus et al. and Butcher et al. do not teach, suggest, or disclose a container with a locking mechanism including a cover panel foldably joined to the complementary panels that overwraps the plastic tray and has a tab formed on one end thereof which is inserted into a slot formed in one of the complementary panels. It is respectfully submitted that Nikolaus et al. or Butcher et al., do not teach, suggest, or disclose each and every claim element recited in Claims 1, as presently amended.

It is respectfully submitted that the cited references do not teach, suggest or disclose a container with an interior surface of one of the complementary panels that includes a mirror deposited onto the surface thereof formed using either metallic foil or metallic ink as recited in

DC 242422.1

Application No. 10/510,632
Amendment dated May 21, 2008
After Final Office Action of April 21, 2008

11

Docket No.: 69887(52888)

amended Claim 11. Support for these amendments may be found in the specification at page 4, lines 5 through 6, and page 17, lines 11-16. Therefore, it is respectfully submitted that Nikolaus et al. or Butcher et al., do not teach, suggest, or disclose each and every claim element recited in Claims 11, as presently amended.

Since the cited references do not teach, suggest or disclose each and every element of amended Claims 1, 2 and 11, it is respectfully submitted that presently amended claims 1, 2, and 11 are not anticipated by Nikolaus et al. or Butcher et al. Claims 3-10 and 15-16 depend from amended Claims 1 and 2 and thus include all of the elements of Claims 1 and 2, as presently amended. Therefore, it is respectfully submitted that Claims 1-11, and 15-16 are not anticipated by Nikolaus et al. or Butcher et al. For the forgoing reasons, withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

35 U.S.C. 103(a) Rejections

As noted above, Claims 1-14 were rejected under 35 U.S.C. §103(a) over Nikolaus et al. (U.S. Patent No. 6,199,559) or Butcher et al. (U.S. Patent No. 5,107,871) alone, or in view of Whitaker et al. (U.S. Patent No. 6,364,097), Barnett et al. (U.S. Patent No. 6,326,069), or Muchin (U.S. Patent No. 5,161,688).

Whitaker et al. describes a pull-apart fragrance sampler having a carrier defining a fold line, barrier applied to the carrier and centered with respect to the fold line such that the fold line divides the barrier into a first half and a second half, and a wet fragrance sample applied to one of the first and second halves of the barrier. The carrier and barrier are folded over upon themselves along the fold line and a seal is formed around the wet fragrance sample without the use of pressure sensitive materials to bind the two halves of the sampler together. The seal and

DC 242422.1

Application No. 10/510,632
Amendment dated May 21, 2008
After Final Office Action of April 21, 2008

12

Docket No.: 69887(52888)

barrier define a pocket which will substantially prevent the premature release of the fragrance from the sampler. (Whitaker et al., Abstract). "The seal, in combination with the folded barrier, defines an area or pocket which will substantially contain the fragrance to prevent the fragrance from escaping the pocket. (Whitaker et al., column 4, lines 4-7). The barrier, 7, is an aqueous or organic based, heat-settable coating, or a film, that is preferably positioned over an generally centered with respect to the fold line of the carrier and ultra-violet curable. (Whitaker et al., column 3, lines 25-35). Whitaker does not disclose a product container made from a combination of paperboard and plastic, nor does it disclose a mirror formed using metallic foil or metallic ink.

Barnett et al. describes a sampler pouch with a lower barrier layer and upper barrier layer that is peelably sealed to the lower layer to form cavity. The fluid sample is placed between the barrier layers. (Barnett et al., Abstract). "The preferred material for the lower and upper barrier layers is a heat sealable, flexible, foil bearing plastic barrier laminate. At least one of the lower or upper layers is preferably constructed with a peelable olefin sealant layer of the type described in U.S. Pat. No. 3,879,492 to Botnick. This material is sold under the trade name "Rayopeel." When heat sealed to itself or to a compatible non-peelable olefin film, the film forms peelable hermetic seals having a seal strength in the range of 1.0 to 2.5 pounds per linear inch." (Barnett et al., column 4, line 59-column 5, line 1). The cavity formed by sealing the lower and upper barrier layers by means of peel seal must; provide nearly a complete barrier to the sample material. In other words, it should be substantially fluid tight. (Barnett et al., column 5, lines 30-34).

Muchin describes a sample of cosmetic, color or fragrance that is enclosed in a cavity of a base ply with a closure ply affixed to one side to cover a hole punched through the base ply to

DC 242422.1

Application No. 10/510,632
Amendment dated May 21, 2008
After Final Office Action of April 21, 2008

13

Docket No.: 69887(52888)

define the retaining cavity. (Muchin, Abstract). "The method in accordance with the invention results in samples having no torn edges, holes or blisters and the sample is free of embedded particles, foreign matter or surface dirt. A further advantage is that there is no odor "leak" from samplers containing a fragrance. This means that the samples can be affixed to magazine pages and the like without imparting any smell, until the sampler is opened by the user" (Muchin, column 6, lines 48-55).

Whitaker et al., Barnett et al., and Muchin do not supplement the deficiencies of Nikolaus et al. and Butcher et al. noted above with respect to Claims 1, 2, and 11. Whitaker et al., Barnett et al., and Muchin disclose various types of sampling pouches. These references disclose pouches that are sealed together with adhesive which are peeled open to reveal a small amount of a cosmetic or fragrance. The references do not teach suggest, or disclose a container constructed of paperboard panels in combination with plastic trays. The pouches of the cited references do not even disclose trays. It would not have been obvious from the cited references to create a container with paperboard panels in combination with plastic trays. More importantly, the paperboard panels in combination with the plastic tray(s) of the claimed invention are preferable to compacts constructed of other materials because the compact is more economical to manufacture. Also, the paperboard panels allow the compact to be printed with text, graphics or any other suitable image by any available method. The paperboard panels also allow for the mirror panels to be printed onto one or more surfaces using metallic ink. (Specification, page 2, lines 2-4 and page 4, lines 4-6). Still further, the combination of paperboard panels and plastic trays is not obvious from the combination of the cited references because one of ordinary skill in the art would not put a barrier layer on a container made entirely of plastic, such as the containers of Nikolaus et al. and Butcher et al.

DC 242422.1

Application No. 10/510,632
Amendment dated May 21, 2008
After Final Office Action of April 21, 2008

14

Docket No.: 69887(52888)

It is respectfully submitted that Nikolaus et al. or Butcher et al., in view of Whitaker et al., Barnett et al., and Muchin do not teach, suggest, or disclose each and every claim element recited in Claims 1, 2 and 11, as presently amended.

Additionally, Whitaker et al., Barnett et al., and Muchin do not teach, suggest, or disclose a container having a locking mechanism that includes a cover panel foldably joined to the complementary panels that overwraps the plastic tray and has a tab formed on one end thereof which is inserted into a slot formed in one of the complementary panels as described in amended Claim 1. It is respectfully submitted that Whitaker et al., Barnett et al., and Muchin, alone or in combination, do not teach, suggest, or disclose each and every claim element recited in Claims 1, as presently amended.

Whitaker et al., Barnett et al., and Muchin do not teach, suggest, or disclose a container an interior surface of one of the complementary panels that includes a mirror deposited onto the surface thereof formed using either metallic foil or metallic ink. It is respectfully submitted that Whitaker et al., Barnett et al., and Muchin, alone or in combination, do not teach, suggest, or disclose each and every claim element recited in Claims 11, as presently amended.

Since the cited references do not teach, suggest or disclose each and every element of amended Claims 1, 2 and 11, it is respectfully submitted that presently amended claims 1, 2, and 11 are not rendered obvious by the combination of Nikolaus et al. or Butcher et al., with Whitaker et al., Barnett et al., or Muchin. Claims 3-10 and 15-16 depend from amended Claims 1 and 2 and thus include all of the elements of Claims 1 and 2, as presently amended. Therefore, it is respectfully submitted that Claims 1-11 and 15-16 are not rendered obvious by the combination of Nikolaus et al., or Butcher et al., with Whitaker et al., Barnett et al., or Muchin.

DC 242422.1

Application No. 10/510,632
Amendment dated May 21, 2008
After Final Office Action of April 21, 2008

15

Docket No.: 69887(52888)

For the forgoing reasons, withdrawal of the rejections under 35 U.S.C. §103(a) is respectfully requested.

CONCLUSION

It is respectfully submitted that none of the prior art of record, alone or in combination, teaches, discloses, or suggests the invention as presently claimed. Based upon the foregoing favorable consideration of Claims 1-11 and 15-16 is respectfully requested. If it is believed that an interview would advance prosecution, the Examiner is invited to call Applicants' representative at the number below.

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Respectfully submitted,

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DC 242422.1